UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: ZANTAC (RANITIDINE)
PRODUCTS LIABILITY LITIGATION MDL No. 2924

TRANSFER ORDER

Before the Panel: Plaintiff in the *Hughley* action listed on Schedule A, who is proceeding *pro se*, and defendant University Medical Center, Inc. (UMC), each move under Panel Rule 7.1 to vacate our order that conditionally transferred *Hughley* to the Southern District of Florida for inclusion in MDL No. 2924. Defendants Boehringer Ingelheim Pharmaceuticals, Inc., GlaxoSmithKline LLC, and Pfizer Inc. oppose the motions to vacate.

In support of their motions to vacate, both movants argue that *Hughley* does not share common questions of fact with the actions in the MDL because plaintiff's alleged injuries are not among the five "designated cancers" that were selected for litigation as bellwethers in the MDL. But, like most plaintiffs in the MDL, plaintiff in *Hughley* alleges that his cancers were caused by ingestion of ranitidine. *See In re Zantac (Ranitidine) Prods. Liab. Litig.*, 437 F. Supp. 3d 1368, 1369 (J.P.M.L. 2020) ("[T]he centralized proceedings should include . . . personal injury actions, in which plaintiffs allege that they developed cancer as a result of NDMA formed from Zantac . . . ."). That plaintiffs' alleged cancers are not designated cancers is of no moment—many other actions in the MDL involve such non-designated cancers. Indeed, the transferee court has issued an order establishing procedures to advance the litigation of such non-designated cancer claims, including deadlines for expert reports. *See* Pretrial Order #81, *In re Zantac (Ranitidine) Prods. Liab. Litig.*, C.A. No. 9:20-md-02924 (S.D. Fla. Feb. 14, 2023), ECF No. 6271.[1]

[1] UMC argues that the transferee court "agreed" to allow non-designated cancer claims to proceed in other forums. This argument is not persuasive. In Pretrial Order #72, the transferee court set a date certain for registry participants to finalize their claims. Any plaintiffs who had filed a short-form complaint were allowed to unilaterally dismiss or amend such complaints until June 30, 2022, after which the master answers filed in the MDL would be deemed answers to the short-form complaints for purposes of voluntarily dismissal under Rule 41. As the court explained:

> Because Plaintiffs' Leadership Counsel has elected not [to] pursue the Non-Designated Cancers, the Court must act to determine (i) how many Certified Federal Participants wish to pursue the Non-Designated Cancers in this MDL; (ii) what, precisely, the Non-Designated Cancers are; and (iii) how, if at all, the Court will adjudicate the Non-Designated Cancers in this MDL.

(… Cont.)

Similarly, denial of transfer is not warranted because plaintiff names a unique defendant (UMC) in his complaint and alleges injury from medications in addition to ranitidine. "Section 1407 does not require a complete identity of common factual issues or parties as a prerequisite to transfer, and the presence of additional facts is not significant where the actions arise from a common factual core." *In re Am. Med. Collection Agency, Inc., Customer Data Sec. Breach Litig.*, 410 F. Supp. 3d 1350, 1353–54 (J.P.M.L. 2019).

Likewise, plaintiff's arguments that transfer will cause him inconvenience are not persuasive. We are sympathetic to plaintiff's claims of inconvenience due to his *pro se* status, but while it might inconvenience some parties, transfer of a particular action often is necessary to further the expeditious resolution of the litigation taken as a whole. *See, e.g.*, *In re Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351–52 (J.P.M.L. 2012) ("While we are aware that centralization may pose some inconvenience to some parties, in deciding issues of transfer under Section 1407, we look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation."). Furthermore, there usually is no need for parties or witnesses to travel to the transferee court for depositions or court hearings. *See In re MLR, LLC, Patent Litig.*, 269 F. Supp. 2d 1380, 1381 (J.P.M.L. 2003). Other *pro se* complaints are pending in this MDL, and the transferee court has issued orders to facilitate pretrial proceedings in these actions. *See, e.g.*, Pretrial Order #67, *In re Zantac (Ranitidine) Prods. Liab. Litig.*, C.A. No. 9:20-md-02924 (S.D. Fla. Sept. 1, 2021), ECF No. 4178 (providing docket information to *pro se* litigants).

Finally, UMC's argument that we should delay transfer until its pending dismissal motion is decided is not well taken. The transferee court is "fully capable" of addressing UMC's motion. *In re Bank of N.Y. Mellon Corp. Foreign Exch. Transactions Litig.*, 857 F. Supp. 2d 1371, 1374 (J.P.M.L. 2012) (rejecting request to delay transfer of action until ruling on motion to dismiss).[2]

Therefore, after considering the parties' arguments, we find that the action listed on Schedule A involves common questions of fact with the actions transferred to MDL No. 2924, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. In our order centralizing this litigation, we held that the Southern District of Florida was an appropriate Section 1407 forum for actions sharing factual questions arising from allegations that ranitidine, the active molecule in Zantac and similar heartburn medications, can form the carcinogen N-Nitrosodimethylamine (NDMA), either during storage or when metabolized in the human body. *See In re Zantac*, 437 F. Supp. 3d at 1369.

Pretrial Order #72 at 7, *In re Zantac (Ranitidine) Prods. Liab. Litig.*, C.A. No. 9:20-md-02924 (S.D. Fla. Feb. 28, 2022), ECF No. 5348. The court subsequently established procedures for the litigation of non-designated cancers. The transferee court has not advised the Panel that continued transfer of Zantac actions alleging non-designated cancers is no longer appropriate.

[2] UMC also asks, in the alternative, that the Panel itself issue an order dismissing UMC. Section 1407, however, "does not empower the MDL Panel to decide questions going to the jurisdiction or the merits of a case." *In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990).

Like the actions in the MDL, plaintiff in *Hughley* alleges that he developed cancer caused by his ingestion of Zantac.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Southern District of Florida and, with the consent of that court, assigned to the Honorable Robin L. Rosenberg for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Karen K. Caldwell
Chair

Nathaniel M. Gorton
David C. Norton
Dale A. Kimball

Matthew F. Kennelly
Roger T. Benitez
Madeline Cox Arleo

IN RE: ZANTAC (RANITIDINE)
PRODUCTS LIABILITY LITIGATION MDL No. 2924

SCHEDULE A

Western District of Kentucky

HUGHLEY v. UNIVERSITY OF LOUISVILLE−MEDICAL CENTER, ET AL.,
C.A. No. 3:22−00268